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ANNEX TO MEMORANDUM OF LAW ON STATE SUCCESSION

The above memorandum discusses the effect of the NPT on a proposed European Federation. It concludes that if a nuclear weapon state is party to the federation, the federation will succeed to its status as a nuclear weapon state. Further it concludes that a non-nuclear-weapon state, party to the NPT, which becomes part of the federation will not violate any of its obligations under Article II since the nuclear weapons will be in the control of the federation and not the component. The question which is put here, is, what are the obligations under the NPT of a component of that federation which withdraws from the federation. The obligations of concern fit into two categories (1) treaty obligations of the component state which it acquired prior to its becoming part of the federated state; (2) treaty obligations of the component state which the federated state incurred during federation.

(1) Treaty obligations incurred prior to the creation of the federated state. A component part of the federation which secedes from it will normally reassume the treaty obligations which it had incurred as an independent entity

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federated prior to joining the state. This was true in the case of Syria which became a party of and then seceded from the United Arab Republic. Treaty obligations of Syria assumed before the creation of the UAR were deemed to "survive" Syria's becoming part of the UAR in 1958 and its secession in 1961. The treaty obligations and rights can be considered to hang in suspension during the period of federation. It is possible for them to be terminated but unless this is done, they may be deemed to survive and automatically come back into force.

Therefore, a non-nuclear weapon state party to the NPT which joined a European Federation that became a nuclear weapon state because it succeeded to nuclear weapon status through another component would revert to its former status as a non-nuclear weapon state. The doctrine of survival would apply, and the obligation would be deemed to "survive" the creation of the federation.

The question of transfer does not arise since the component is not taking nuclear weapons from the federation. A more difficult problem would arise if the withdrawing component was formerly a nuclear weapon state. For it to revert to its former status would increase the number of

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nuclear weapon states, which is contrary to one of the intentions of the Treaty. This question will have to be resolved in the actual drafting of the Treaty creating the European Federation.

(1) Treaty obligations which the European Federation incurred as an entity. These obligations may survive in the event of the secession of one of the components of that federation unless within a reasonable period of time the seceding state declares itself not to be so bound. Further, the possibility of secession must be consistent with the purpose of the Treaty creating the Federation. In the case of Singapore, Article 13 of Annex B of the Singapore Separation Act stated that any agreement entered into before Singapore Independence Day between Malaysia and any other state or states which had application to Singapore would be deemed in force between Singapore and the other state or states.

If the Federation as a nuclear weapon state were to accede to the Non Proliferation Treaty as a nuclear weapon state, would a component of the Federation be able to secede and become a nuclear weapon state? Such a component

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might state that it was willing to assume the obligation of the federation as a nuclear weapon state. This statement would not be valid. When the Federation acceded to the treaty, it would have an obligation to maintain the intention of the treaty which is to prevent the spread of nuclear weapons and/or the increase of nuclear weapon states.

The rights and obligations of the NPT would be assumed by the Federation for itself as a federation. It would not be a right belonging to the component governments as such. Thus a seceding component would not have a claim to the rights and obligations of the Federation which did not specifically apply to it, and the non-nuclear weapon state component could not succeed to nuclear weapon status. For it to acquire weapons from the federation would constitute a "transfer" which is prohibited by Article I of the Non-Proliferation Treaty. In the cases noted above, the seceding state (Singapore and Syria) only assumed those obligations which applied to it. The rule of survival that was discussed above in (1), therefore would apply, and the treaty obligations of the component prior to its joining the federation would resume. The former component, as an

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independent entity would then have two choices. If it had formerly signed the NPT as an independent entity, it could reacquire its status either through "survival" or by signing the Treaty as a non-nuclear weapon state. If it had not signed before, it could sign only as a non-nuclear weapon state. The Federation, or any other nuclear weapon signatory could not give it nuclear weapons without violating the prohibitions of transfer.

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